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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11	JAMES SORRELS and JODI SORRELS,,)	Civil No. 09cv2884 L(WMc)
12	Plaintiffs,)	
13	v.)	ORDER GRANTING WITH
14	J.P. MORGAN CHASE NATIONAL)	PREJUDICE DEFENDANT
15	CORPORATE SERVICES, INC, <i>et al.</i> ,)	EQUIPOINT'S MOTION TO
16	Defendants.)	DISMISS [doc. #10]

17 **Background**

18 On March 13, 2007, plaintiffs signed their final loan documents with Equipoint Financial
19 Network, Inc. ("Equipoint") that served to refinance their residential property. Plaintiffs received
20 a letter dated May 1, 2007, from Equipoint that indicated EMC Mortgage Corporation would
21 begin serving the loan on June 1, 2007. At that same time, they learned that the promissory note
22 was then owned by Bear Sterns Mortgage, which was subsequently taken over by JP Morgan,
23 the current owner of the note. After reviewing the EMC statement, plaintiffs contend the interest
24 rate on the loan was incorrect and they neither agreed to the higher interest rate nor signed any
25 documents reflecting this change. In response to the allegedly erroneous statement, plaintiffs
26 sought documents from EMC. The documents EMC provided to plaintiffs with the higher
27 interest rates are dated April 24, 2007, and appear to contain plaintiffs' signatures but plaintiffs
28 assert they are forgeries. In the complaint, plaintiffs allege, *inter alia*, on information and belief,

1 that Equipoint forged plaintiffs signatures on the new documents in a conspiracy to defraud the
2 plaintiffs. (Compl., ¶¶ 25-30.)

3 Equipoint filed a voluntary petition under Chapter 11 of the Bankruptcy Code on June 20,
4 2008. The Bankruptcy Court confirmed the debtor's fourth amended plan of reorganization on
5 May 27, 2009.

6 Plaintiffs filed the present complaint on December 23, 2009, against Equipoint and others
7 alleging the following causes of action: violation of the Truth in Lending Act, breach of written
8 contract, breach of the implied covenant of good faith and fair dealing, negligence, fraud,
9 conspiracy to defraud, forgery, unjust enrichment, and negligent misrepresentation. The
10 complaint also seeks declaratory judgment and rescission/cancellation of the current mortgage
11 loan.

12 Equipoint, as the reorganized debtor, moves to dismiss the complaint in its entirety
13 because the claims are barred under 11 U.S.C. § 1141. Plaintiffs oppose the motion.

14 Discussion

15 Under bankruptcy law, confirmation of a bankruptcy plan discharges a debtor from any
16 debt that arose before the date of confirmation, "whether or not (i) proof of claim based on such
17 debt is filed or deemed filed ...; (ii) such claim is allowed ...; or (iii) the holder of such claim has
18 accepted the plan." 11 U.S.C. § 1141(d)(1)(A). "A discharge ... operates as an injunction against
19 the continuation of an action, the employment of process, or an act, to collect, recover or offset
20 any debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). The Ninth Circuit has
21 explained that whether section 1141(d) discharges a claim hinges upon when the alleged
22 misconduct occurred. *O'Loughlin v. County of Orange*, 229 F.3d 871, 874-75 (9th Cir. 2000).

23 EMC argues that because the Confirmation Order discharges it from any debt that arose
24 prior to the May 27, 2009 date of confirmation, plaintiffs are prohibited and enjoined from
25 prosecuting this action. Plaintiffs' claims would survive the discharge injunction only if they
26 arose subsequent to the confirmation date of May 27, 2009. All of plaintiffs' claims against
27 Equipoint, including the alleged forgery, arose prior to the date of the Plan confirmation and
28 therefore, the claims are barred by the discharge injunction.

1 But plaintiffs contend that they have pleaded causes of action that are not precluded by a
2 Chapter 11 confirmed plan because their claims against Equipoint are non-dischargeable under
3 § 523(a)(2), (4) and (6) of the Bankruptcy Code. Although certain debts are not dischargeable in
4 bankruptcy, the creditor must institute an action in the bankruptcy court, not the district court, to
5 have the debt declared exempt from the bankruptcy proceedings. *See* Bankruptcy Rule 4007
6 (setting forth the procedure for determination of the dischargeability of a debt, and requires the
7 filing of a complaint by the creditor). In their opposition to the motion to dismiss, plaintiffs
8 contend they were not aware of the bankruptcy proceedings but nevertheless they must seek a
9 dischargeability ruling in the bankruptcy court that issued the discharge prior to filing this action
10 against Equipoint, the reorganized debtor.


11 A more fundamental error also exists in plaintiffs' suggestion that their claims are
12 nondischargeable under § 523 of the Bankruptcy Code. Section 523 sets for sixteen categories of
13 debts that are not discharged if the debtor is an *individual*. In other words, the section 523
14 exceptions to discharge apply only to individuals in bankruptcy and do not apply when the
15 debtor is not an individual. 11 U.S.C. § 523(a). Here, the debtor, Equipoint, is not an individual
16 and the exceptions to discharge are not applicable to it.

17 Conclusion

18 Plaintiffs' complaint against Equipoint must be dismissed in its entirety. Equipoint was
19 granted a discharge under 11 U.S.C. § 1141. All the wrongful acts alleged caused by Equipoint
20 arose before the date of the Plan confirmation on May 27, 2009. The exceptions to
21 dischargeability under 11 U.S.C. § 523 that plaintiffs assert must first be determined in the
22 bankruptcy court but the exceptions to dischargeability are applicable only to individuals, which
23 Equipoint is not. Accordingly, defendant Equipoint's motion to dismiss is **GRANTED** with
24 prejudice.

25 **IT IS SO ORDERED.**

26 DATED: February 3, 2011

27 
28 M. James Lorenz
United States District Court Judge

1 COPY TO:

2 HON. WILLIAM McCURINE, JR.
3 UNITED STATES MAGISTRATE JUDGE

4 ALL PARTIES/COUNSEL
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